

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application of )
SHEKINAH NETWORK )
For Extension of Construction Permit For )
Instructional Television Fixed Service Station )
WNC533, Carlsbad, New Mexico )

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 2004

Released: March 17, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. In this Memorandum Opinion and Order, we address Shekinah Network’s (Shekinah) “Petition for Reconsideration and Reinstatement Nunc Pro Tunc” of the construction permit for Instructional Television Fixed Service (ITFS) Station WNC533, Carlsbad, New Mexico. For the reasons stated below, we grant Shekinah’s petition and reinstate its application.

2. Background. On December 8, 1994, the Commission granted a construction permit to Shekinah for ITFS D Group channels (Station WNC533) at Carlsbad, New Mexico. According to the terms of the permit, Shekinah was required to complete construction of the station by June 8, 1996. Shekinah timely sought extensions of its construction permit, which were granted on July 9, 2001 through January 9, 2002, and on February 15, 2002 through August 15, 2002. On August 14, 2002, Shekinah filed an additional request for extension of its construction permit. However, on August 16, 2002, the Wireless Telecommunications Bureau issued a Notice of Immediate Application Dismissal indicating that Shekinah’s extension application was dismissed for lack of an FCC Registration Number (FRN). On August 30, 2002, Shekinah resubmitted its extension request with Shekinah’s FRN. On September 16, 2002, Shekinah filed the instant Petition.

1 Petition for Reconsideration and Reinstatement Nunc Pro Tunc (filed Sep. 16, 2002) (Petition).

2 In re Applications of Gateway Christian School and Shekinah Network, Memorandum Opinion and Order, 9 FCC Rcd 7933 (1994).

3 See Construction Permit for Station WNC533.

4 See Public Notice, Mass Media Bureau Instructional Television Fixed Service/Multipoint Distribution Service Actions, Report No. 431 (rel. Jul. 12, 2001).

5 See Public Notice, Mass Media Bureau Instructional Television Fixed Service/Multipoint Distribution Service Actions, Report No. 673 (released Feb. 21, 2002).

6 Application for Extension of Construction Permit (filed Aug. 14, 2002).

7 Notice of Immediate Application Dismissal (Aug. 16, 2002).

8 Application for Extension of Construction Permit (resubmitted Aug. 30, 2002).

3. *Discussion.* Shekinah argues that the Bureau erred in dismissing Shekinah's application for lacking an FRN. Shekinah states that when the Commission adopted the requirement that certain forms and filings with the Commission include an FRN,<sup>9</sup> certain categories of submissions, such as letters, were expressly excluded from this requirement.<sup>10</sup> Shekinah notes that it submitted its Extension Request in letter format, and thus the Extension Request was not required to include an FRN.<sup>11</sup> Shekinah further argues that because it resubmitted its extension request within ten business days following its dismissal, Shekinah's request is entitled to retain its original August 14, 2002 filing date, pursuant to the grace period set forth in Section 1.8004(d) of the Commission's Rules.<sup>12</sup> Shekinah contends that there is no public interest in dismissing its extension request.<sup>13</sup>

4. We agree with Shekinah that its application should not have been dismissed for lack of an FRN. Section 1.8003 of the Commission's Rules states that "anyone applying for a license" must submit an FRN.<sup>14</sup> The rule also states, however, "A list of applications and other instances where the FRN is required will be posted on the Internet site and linked to the CORES page."<sup>15</sup> Requests for an extension of time to construct an ITFS station must be submitted by letter.<sup>16</sup> While several filings relating to ITFS are contained in that list, a letter request for extension of time to construct an ITFS station is not included.<sup>17</sup> Moreover, the Commission has stated that letters need not provide FRNs.<sup>18</sup> The United States Court of Appeals for the District of Columbia has stated, "[w]hen the sanction is as drastic as dismissal without any consideration whatever of the merits, elementary fairness compels clarity in the notice of the material required as a condition for consideration."<sup>19</sup> In this case, we conclude that Shekinah did not receive adequate notice that an FRN was required because its filing was not listed on the CORES web page and

---

<sup>9</sup> Adoption of a Mandatory FCC Registration Number, MM Docket No. 00-205, *Report and Order*, 16 FCC Rcd 16138 (2001) (*FRN Report and Order*).

<sup>10</sup> *Id.* at 16144 ¶ 23.

<sup>11</sup> Petition for Reconsideration and Reinstatement *Nunc Pro Tunc* at 2-3.

<sup>12</sup> 47 C.F.R. § 1.8004(d).

<sup>13</sup> Petition for Reconsideration and Reinstatement *Nunc Pro Tunc* at 4-5.

<sup>14</sup> 47 C.F.R. § 1.8003.

<sup>15</sup> *Id.*

<sup>16</sup> See MM Docket Nos. 98-43 and 94-149, *Report and Order*, 13 FCC Rcd 23056, 23091-93 ¶¶ 86-89 (1998), *recon. granted in part and denied in part, Memorandum Opinion and Order*, 14 FCC Rcd 17525 (1999).

<sup>17</sup> See <http://www.fcc.gov/Bureaus/OMD/Reports/coresforms.pdf>.

<sup>18</sup> *FRN Report and Order*, 16 FC Rcd at 16144 ¶ 23.

<sup>19</sup> *Salzer v. FCC*, 778 F.2d 869, 874 (D.C. Cir. 1985), *citing Radio Athens, Inc. (WATH) v. FCC*, 401 F.2d at 404. *Salzer* involved, in part, applications filed with the Commission to construct and operate a low power television station. The applications were rejected by the Commission for not satisfying its specific acceptability criteria for such applications. 778 F.2d at 871-73. The court indicated that the less forgiving the acceptability criteria, the greater the Commission's obligation is to be explicit about any prerequisites for consideration. *Id.* at 875. Since the Commission had failed to provide adequate notice as to how certain information should be filed with the agency, the *Salzer* court held that the Commission was not entitled to reject the applications on the ground that they failed to meet these informational requirements. *Id.* The court vacated the underlying Commission order dismissing these applications, and remanded for the applications' reinstatement. *Id.* See also *Bamford v. FCC*, 535 F.2d 78, 82 (D.C. Cir.) ("elementary fairness requires clarity of standards sufficient to apprise an applicant of what is expected"), *cert. denied*, 429 U.S. 895 (1976).

because the Commission stated that letters did not require an FRN. Accordingly, we will grant Shekinah's petition, and direct the Broadband Division's licensing staff to reinstate the application.<sup>20</sup>

5. We take this opportunity to clarify that applicants for an extension of time to construct an ITFS station are required to submit an FRN as part of their request because those applicants are seeking a license from the Commission.<sup>21</sup> We note that Shekinah provided its FRN when it resubmitted its application.<sup>22</sup>

6. Accordingly IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.41 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.106, the Petition for Reconsideration and Reinstatement *Nunc Pro Tunc* filed by Shekinah Network on September 16, 2002 IS GRANTED, and the application for extension of time to construct filed by Shekinah Network on August 14, 2002 IS REINSTATED.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

---

<sup>20</sup> Cf. Mobile UHF, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 22945 (2001) (Commission may reinstate license when licensee demonstrates that prior determination that license had cancelled automatically for failure to construct was erroneous).

<sup>21</sup> 47 C.F.R. § 1.8003.

<sup>22</sup> In light of our action herein, we need not address Shekinah's argument that even if the original filing was correctly dismissed, its resubmission should be entitled to retain the August 14, 2002 filing date under Section 1.8004(d) of the Commission's Rules.